IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 62 OF 1998

1. Mr. Ratnakar Anant
   Verlekar, Goldsmith,

2. Mrs. Ratnaprabha R.
   Verlekar, Housewife,

3. Mrs. Radhikabai Verlekar
   (since deceased) widow
   of late Mr.Anant Verlekar,
   through her heirs and
   Legal Representatives:

   a). Ratnakar A.Verlekar,
   b). Ratnaprabha R.Verlekar,
   c). Suresh A.Verlekar,
   d). Ashok A.Verlekar,
   e). Dilip A.Verlekar,
       already on record,
       as Appellants at
       sr.nos.1, 2, 4, 5 & 6.
   f). Mrs. Sushanti Suresh
       Verlekar, major,
   g). Sumita Ashok Verlekar,
       housewife,
   h). Mrs. Lalan Dileep
       Verlekar, housewife,
       All r/o Anant Niwas
       Gaura Wado, Calangute,
       Bardez, Goa.

4. Mr. Suresh Anant Verlekar,
   Government Servant,

5. Mr. Ashok Anant Verlekar,
   Goldsmith,

6. Mr. Dileep Anant Verlekar,
   Private service,
   All major in age,
   All r/o Anant Niwas, Gaura
   Wado, Calangute, Bardez,
   Goa.

7. Mr. Prakash Anant Verlekar,
   Goldsmith,

8. Mrs. Prashanti P. Verlekar,
   housewife,
   Both major in age,
   Both r/o Sakinaka Housing
   Society, Room B-14,
   Sakinaka, Mumbai - 12.

9. Mr. Kashinath Sadashiv
   Nagvenkar,

10. Mrs. Premavati Kashinath
    Nagvenkar,
    Both major in age,
    Both r/o Canca, Bardez,
    Goa.

11. Mr. Vinayak Anant
    Mashelkar(since deceased):
    a). Suvarnamala V.
        Mashelkar(already on
        record as Appellant
        No.12),
    b). Rajan Vinayak
        Mashelkar, son,
    c). Mrs. Vandana Rajan
        Mashelkar, daughter-in-law,
    d). Kishor Vinayak Mashelkar,
        son,
    e). Mrs. Vrinda Kishor
        Mashelkar, daughter-in-law,
    f). Mrs. Surekha Ajit Kanekar,
        housewife, daughter,
    g). Ajit Gajanan Kanekar,
        goldsmith.

        The addresses of the
        Appellant Nos.11(b) to 11(e)
        is Somwar Peth, Malvan,
        District Sindhudurg,
        Maharashtra.

        Appellants at sr. no.11(f)
        & (g) are r/o 304/32, Cross
        No.4, New Good Shed Road,
        Near Nartaki Theatre,
        Belgaum.

12. Mrs. Suvarnamala V. Mashelkar,
    major in age,
    Both r/o Malvan,
    Maharashtra.

12A.Mr. Pramod Shirodkar,

12B.Mrs. Priya Pramod Shirodkar,

13. Mrs. Meerabai Gajanan
Shirodkar,
All major in age,
All residents of
Livramento Waddo,
Sangolda, Bardez, Goa.

14. Mr. Satchitanand R.
Shirodkar,

15. Mrs. Premavati S.
Shirodkar,
Both major of age,
Both residents of
Bondir, Santa Cruz,
Ilhas, Goa. ... Appellants

versus

1. Mr. Manohar Raghuvir
Verlekar, Goldsmith,

2. Mrs. Surekha Manohar
Verlekar,
Both of major age,

3. Mr. Premanand Raghuvir
Verlekar, Goldsmith,

4. Mrs. Lalita Premanand
Verlekar, Housewife,

5. Mr. Kalidas Raghuvir
Verlekar, Private service,

6. Mrs. Kalindi Kalidas
Verlekar, Housewife,

All of major age,
All residents of
Iscrivao Vado,
Candolim, Bardez, Goa.

7. Mr. Arvind Raghuvir
Verlekar, Goldsmith,

8. Mrs. Shakuntala Arvind
Verlekar, Housewife,
Both of major age,
Both residents of
Somawar Peth,
Gawandiwada, Malvan,
District Ratnagiri,
Maharashtra.

9. Mr. Shambu A. Chindarkar,
Goldsmith,

10 Mrs. Kishori S. Chindarkar,
Housewife,
Both of major age,
Both residents of
Parsem,
Near Bhagawati Temple,
Pernem, Goa.

11. Mr. Suresh R. Chonkar,
Dealer in Jewellery,

12. Mrs. Lalita Suresh
Chonkar, housewife,
Both of major age,
Both residents of
Karelwadi,
Thakurdwar,
Mumbai - 2.

13. Mrs. Gangabai Parshuram
Verlekar, widow of late
Parshuram Verlekar,

14. Mr. Ramakant Parshuram
Verlekar, Goldsmith,

15. Mrs. Deuki Ramakant
Verlekar, Housewife,

16. Mr. Dinanath Parshuram
Verlekar, Service,

17. Mrs. Rajani Dinanath
Verlekar, Housewife,
All of major age,
All residents of
Kunj Niwas,
3rd Floor, Room No.28,
Sahakar Road,
West Jogeshwari,
Mumbai - 60.

18. Mr. Mohan Parshuram
Verlekar, Service,

19. Mrs. Kunda Mohan Verlekar,
housewife,
Both of major age,
Both residents of
Tarun Bharat Society's
Nishan Cooperative
Housing Society,
1st Floor, Room No.6,
Plot No.17, Sahar Road,
Chakala, Andheri(East),
Mumbai - 93.

20. Mr. Vasant V. Shirodkar,
Goldsmith,

21. Mrs. Shalini Vasant Shirodkar,
housewife,
Both of major age,
Both residents of
Chivari Anjuna,
Bardez, Goa.

22. Mr. Vasant Shridhar Chodankar,
Service,

23. Mrs. Pramila Vasant Chodankar,
housewife,
Both of major age,
Both residents of
Ecoxim, Pomburpa,
Bardez, Goa.

24. Mr. Rohidas R. Raikar,
service,

25. Mrs. Milan Rohidas Raikar,
housewife,
Both of major age,
Both residents of
Elde Corporation
Godown Building No.4524,
Marine Street,
Dhobitalao,
Mumbai - 2. ... Respondents

Mr. S. D. Lotlikar, Senior Advocate with Miss S. Dessai, Advocate for the Appellants.

Mr. Valmiki Menezes, Advocate for Respondent Nos.1 to 6.

Mr. A. P. Cardozo, Advocate for Respondent Nos.13 to 25.

CORAM : P. V. HARDAS, J.

DATE : 13TH FEBRUARY,2004.

ORAL JUDGMENT

This First Appeal at the instance of the Original Plaintiffs challenges the Judgment dated 17th January, 1998 and the final Decree passed by the learned Civil Judge, Senior Division, Mapusa, dated 17th January, 1998, in Special Civil Suit No.12/80/D.

2. It is not necessary to advert to the facts in detail in view of the limited challenge to the Judgment and Decree posed in the present Appeal. It may be stated that after the filing of the suit and after the Defendants had filed their written statement and counterclaim, a preliminary Decree dated 10th August, 1992 came to be passed by the Civil Judge, Senior Division, Mapusa. This preliminary Decree came to be passed by virtue of the Order of the learned Civil Judge, Senior Division, Mapusa, dated 12th March, 1987 which reads as under:-

> "Accordingly, and in view of the said submission it is ordered that the Plaintiffs are entitled to 1/3rd share of the suit property and the Defendants are entitled to the remaining 2/3rd share. The Preliminary Decree shall be drawn accordingly. The

> consequential Issue Nos.1 and 2 framed by the Court dated 15th December, 1980 shall stand deleted".

3. As stated above, in pursuance to this Order, the Preliminary Decree was drawn on 10th August, 1992. By this Preliminary Decree, the respective shares of the parties were declared. The suit remained pending on the file of the Civil Judge, Senior Division, Mapusa and the Civil Judge, Senior Division, Mapusa, ultimately by the Judgment impugned in the present Appeal ordered the passing of the final Decree virtually in terms of the Preliminary Decree. The operative Order of the Judgment of the learned Trial Court reads as under:-

> " **O R D E R**
>
> The plaintiffs are declared to be the owners of 1/3rd share of the suit property which share is allotted to the plaintiffs. The parties to bear their own costs. The suit is decreed. Decree to be drawn accordingly".

4. Admittedly, the suit filed by the Plaintiffs in the year 1980, was for declaration and partition. This is adverted to by the learned Trial Court in the opening paragraph of the Judgment. By the counterclaim which has been filed by the Defendants, the Defendants also prayed for partitioning of the suit property. By

virtue of the Preliminary Decree, the learned Trial Court had declared the respective shares of the parties. However, in pursuance to the Preliminary Decree, the learned Trial Court had not appointed a Commissioner for partitioning the suit property by metes and bounds. The final Decree is passed virtually reproducing the Preliminary Decree and only declaring the respective shares of the parties. In fact, the operative Order states that the Plaintiffs are declared to be the owners of 1/3rd share of the suit property and the share is allotted to the Plaintiffs. No steps have been taken as per law after passing of the Preliminary Decree. This is precisely the grievance as set out in the present Appeal by the Appellants.

5. Mr. Valmiki Menezes, learned Counsel appearing on behalf of Respondent Nos.1 to 6 states that some Miscellaneous Applications including one for correction of the Preliminary Decree has not been decided and was pending when the final Decree was passed.

6. The Judgment and Decree as passed by the learned Trial Court is wholly unsustainable and is, therefore, quashed and set aside. The matter will have to be remitted back to the learned Trial Court for passing a final Decree in accordance with law. The

learned Trial Court to decide all Miscellaneous Applications pending and thereafter to pass the final Decree according to law.

7. In the result, the Appeal is allowed. The Judgment and Decree impugned in the present Appeal is quashed and set aside and the matter is remitted back to the learned Trial Court, who shall pass a final Decree in accordance with law after deciding all the Miscellaneous Applications pending in the suit. While passing the final Decree, the learned Trial Judge shall also decide the other issues pending for consideration, if they so arise for consideration at that time.

8. First Appeal No.62 of 1998 is accordingly allowed with no order as to costs. The learned Trial Court to expeditiously decide the suit in terms of the directions of this Court.

9. Parties to appear before the learned Trial Court on 22nd March, 2004.

P. V. HARDAS, J.

RD